

**§ 14-72.1. Concealment of merchandise in mercantile establishments.**

(a) Whoever, without authority, willfully conceals the goods or merchandise of any store, not theretofore purchased by such person, while still upon the premises of such store, shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided in subsection (e). Such goods or merchandise found concealed upon or about the person and which have not theretofore been purchased by such person shall be prima facie evidence of a willful concealment.

(b) Repealed by Session Laws 1985 (Regular Session, 1986), c. 841, s. 2.

(c) A merchant, or the merchant's agent or employee, or a peace officer who detains or causes the arrest of any person shall not be held civilly liable for detention, malicious prosecution, false imprisonment, or false arrest of the person detained or arrested, where such detention is upon the premises of the store or in a reasonable proximity thereto, is in a reasonable manner for a reasonable length of time, and, if in detaining or in causing the arrest of such person, the merchant, or the merchant's agent or employee, or the peace officer had at the time of the detention or arrest probable cause to believe that the person committed the offense created by this section. If the person being detained by the merchant, or the merchant's agent or employee, is a minor under the age of 18 years, the merchant or the merchant's agent or employee, shall call or notify, or make a reasonable effort to call or notify the parent or guardian of the minor, during the period of detention. A merchant, or the merchant's agent or employee, who makes a reasonable effort to call or notify the parent or guardian of the minor shall not be held civilly liable for failing to notify the parent or guardian of the minor.

(d) Whoever, without authority, willfully transfers any price tag from goods or merchandise to other goods or merchandise having a higher selling price or marks said goods at a lower price or substitutes or superimposes thereon a false price tag and then presents said goods or merchandise for purchase shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided in subsection (e).

Nothing herein shall be construed to provide that the mere possession of goods or the production by shoppers of improperly priced merchandise for checkout shall constitute prima facie evidence of guilt.

(d1) Notwithstanding subsection (e) of this section, any person who violates subsection (a) of this section by using a lead-lined or aluminum-lined bag, a lead-lined or aluminum-lined article of clothing, or a similar device to prevent the activation of any antishoplifting or inventory control device is guilty of a Class H felony.

(e) Punishment. – For a first conviction under subsection (a) or (d), or for a subsequent conviction for which the punishment is not specified by this subsection, the defendant shall be guilty of a Class 3 misdemeanor. The term of imprisonment may be suspended only on condition that the defendant perform community service for a term of at least 24 hours. For a second offense committed within three years after the date the defendant was convicted of an offense under this section, the defendant shall be guilty of a Class 2 misdemeanor. The term of imprisonment may be suspended only on condition that the defendant be imprisoned for a term of at least 72 hours as a condition of special probation, perform community service for a term of at least 72 hours, or both. For a third or subsequent offense committed within five years after the date the defendant was convicted of two other offenses under this section, the defendant shall be guilty of a Class 1 misdemeanor. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 11 days. However, if the sentencing judge finds that the defendant is unable, by reason of mental or physical infirmity, to perform the service required under this section, and the reasons for such findings are set forth in the judgment, the judge may pronounce such other sentence as the judge finds appropriate.

(f) Repealed by Session Laws 2009-372, s. 12, effective December 1, 2009, and applicable to offenses committed on or after that date.

(g) Limitations. – For active terms of imprisonment imposed under this section:

- (1) The judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial;
- (2) The defendant must serve the mandatory minimum period of imprisonment and good or gain time credit may not be used to reduce that mandatory minimum period; and
- (3) The defendant may not be released or paroled unless he is otherwise eligible and has served the mandatory minimum period of imprisonment. (1957, c. 301; 1971, c. 238; 1973, c. 457, ss. 1, 2; 1985 (Reg. Sess., 1986), c. 841, ss. 1-3; 1987, c. 660; 1993, c. 539, s. 35; 1994, Ex. Sess., c. 24, s. 14(c); c. 28, s. 1; 1995, c. 185, s. 3; c. 509, s. 9; 1997-80, s. 1; 1997-443, s. 19.25(ff); 2009-372, s. 12.)